

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION I

CA07-1171

March 19, 2008

CONNIE WARRICK

APPELLANT

v.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

AN APPEAL FROM CRAWFORD
COUNTY CIRCUIT COURT
[No. JV-2001-169 and JV-2002-070]

HONORABLE MIKE MEDLOCK,
JUDGE

AFFIRMED

Connie Warrick brings this appeal from an order of the Crawford County Circuit Court terminating her parental rights to her daughter M.A. Warrick asserts that there is insufficient evidence to support the circuit court's decision, both as to grounds for termination and the finding that termination is in M.A.'s best interests. We disagree with Warrick's contentions and affirm the circuit court's order.

Appellee Arkansas Department of Human Services ("DHS") had been involved with the family since April 2002. M.A. was born on January 21, 2004. On March 17, 2005, DHS placed a seventy-two-hour hold on M.A., based on Warrick's incarceration for criminal charges, including endangering the welfare of a minor.

On March 21, 2005, a petition for emergency custody was filed. That same date, an emergency order was entered placing custody of M.A. with DHS. The circuit court later found probable cause for entry of the emergency order.

On April 28, 2006, an adjudication hearing was held where the circuit court found that M.A. was dependent-neglected. Visitation was authorized to increase as progress indicated.

On August 25, 2005, a review hearing was held. The court ordered Warrick's visitation to be supervised at DHS two times per week for 1½ hours each visit, with DHS to have the discretion to permit less restrictive visitation. Warrick was ordered to submit to random drug screens.

On November 3, 2005, a review hearing was held where the circuit court found that the case was moving towards an appropriate permanency plan for M.A. and that the goal would continue to be reunification with Warrick. The court found that Warrick had partially complied with the case plan in that she had attended parenting classes, completed community service, and attended outpatient mental-health and substance-abuse counseling.

On January 5, 2006, another review hearing was held where the goal of the case was changed to termination of parental rights. The court specifically found that Warrick had minimally complied with the court's orders and case plan. The court found that Warrick had attended parenting classes, completed her community service, and had a counseling assessment that released her from outpatient to day treatment, but that Warrick failed to enroll in the day-treatment program. Warrick was not in compliance with the court's orders and case plan in that she had not obtained a NA sponsor, did not get into Gateway House because she had

been arrested, and had not maintained a safe and stable residence. Visitation was to continue at the jail between Warrick and M.A.

After a June 29, 2006 permanency-planning hearing, the circuit court continued the goal of termination of parental rights. The court found that Warrick had completed her case plan and had complied with the court's orders but continued to have substance-abuse problems and had begun outpatient treatment again. Supervised visitation between Warrick and M.A. was continued. DHS was ordered to file a petition to terminate Warrick's parental rights.

On April 9, 2007, DHS filed its termination petition. As grounds for termination, the petition alleged that it was in M.A.'s best interest to terminate Warrick's parental rights; that M.A. had been adjudicated dependent-neglected and had been out of Warrick's home for more than twelve months and, despite a meaningful effort by DHS, the conditions which necessitated removal had not been remedied; and that, during the twelve-month period that M.A. had lived outside the home, Warrick had failed to provide significant material support.¹

On July 26, 2007, the termination hearing was held. Caseworker Denisa Love testified that M.A. had been out of the home for more than two years. She was aware that Warrick was incarcerated but did not know the nature of the charges or the sentence imposed. Her recommendation was that Warrick's parental rights be terminated, noting that it would be difficult for M.A. to be returned home with Warrick incarcerated. Love also noted that Warrick had other, unresolved charges pending against her. Love did not believe that Warrick

¹On June 21, 2007, DHS filed a second petition identical to the earlier petition.

had her own home, stating that the file indicated that Warrick was living with a friend prior to being incarcerated.

Warrick testified that she was awaiting transfer to the Arkansas Department of Correction to serve a twenty-year sentence on drug charges. She asserted that ten years of her sentence was suspended and that she would only have to serve approximately two years before she could be released. She also admitted that she had other charges pending against her. Warrick stated that, prior to her incarceration, she had given up her own stable apartment and moved in with a friend to save money. She said that she was drawing SSI for her disabilities, including depression.

Warrick admitted that it had been more than two years since M.A. entered DHS's custody. She said that she and M.A. have a tremendous bond and that they love each other. Warrick said that she and M.A. enjoyed their visitation with each other. She asked the court not to terminate her parental rights so that she could serve her sentence and come home to be a parent for M.A. Warrick listed some classes that she wanted to take to make her life better, including GED classes, NA meetings, and counseling. She also said that she had been drug-free for two years. She admitted that it could be over a year before she got into some of the classes or counseling.

On August 24, 2007, the court issued an order terminating Warrick's parental rights. The court found that DHS had provided clear and convincing evidence that it would be in the best interest of M.A. to have Warrick's parental rights terminated based on the likelihood that M.A. would be adopted and that potential harm could be caused by returning M.A. to

Warrick's custody. The court also found that DHS had proven three grounds for termination: (1) M.A. had been out of the home for longer than twelve months and, during that time, Warrick had willfully failed to provide material support or maintain meaningful contact with M.A. (*see* Ark. Code Ann. § 9-27-341(b)(3)(B)(ii)); (2) that M.A. had been adjudicated dependent-neglected and had continued out of Warrick's custody for over twelve months and the conditions that caused the removal had not been remedied by the parent despite meaningful efforts by DHS (*see* Ark. Code Ann. § 9-27-341(b)(3)(B)(i)); and (3) that other factors or issues had arisen subsequent to the filing of the original petition that indicate that it is contrary to M.A.'s best interests to return her to Warrick and, despite services to Warrick, she had manifested the incapacity or indifference to remedy these issues (*see* Ark. Code Ann. § 9-27-341(b)(3)(B)(vii)(a)). The circuit court found Warrick had failed to comply with any of the court's orders or case plans. The court further found that Warrick had been sentenced to ten years in the penitentiary.

Warrick filed a timely notice of appeal. She now raises two points for reversal, contending that there is insufficient evidence to support the circuit court's findings that it was in M.A.'s best interests for Warrick's parental rights to be terminated or that DHS had proven grounds for termination.

This court reviews termination of parental rights cases de novo. *Yarborough v. Arkansas Dep't of Human Servs.*, 96 Ark. App. 247, 240 S.W.3d 626 (2006). The grounds for termination of parental rights must be proven by clear and convincing evidence. *Id.* When the burden of proving a disputed fact is by clear and convincing evidence, the question on

appeal is whether the circuit court's finding that the disputed fact was proved by clear and convincing evidence is clearly erroneous, giving due regard to the opportunity of the circuit court to judge the credibility of the witnesses. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.* Termination of parental rights is an extreme remedy and in derogation of the natural rights of the parents. *Kight v. Arkansas Dep't of Human Servs.*, 94 Ark. App. 400, 231 S.W.3d 103 (2006). Parental rights, however, will not be enforced to the detriment or destruction of the health and well-being of the child. *Id.*

In her first point, Warrick argues that the circuit court erred in finding that it was in M.A.'s best interests for Warrick's parental rights to be terminated. Arkansas Code Annotated section 9-27-341(b)(3) (Supp. 2007) provides that an order terminating parental rights shall be based upon a finding by clear and convincing evidence that it is in the best interest of the juvenile, including consideration of the likelihood of adoption and the potential harm, specifically addressing the effect on the health and safety of the child, caused by continuing contact with the parent.

Warrick argues that DHS did not prove by clear and convincing evidence that an appropriate permanency plan existed and that M.A. was "adoptable." There is no requirement that every factor must be established by clear and convincing evidence; rather, after consideration of all the statutory factors, the evidence must be clear and convincing that the termination is in the best interest of the children. *McFarland v. Arkansas Dep't of Human*

Servs., 91 Ark. App. 323, 210 S.W.3d 143 (2005). Here, the caseworker testified that M.A. was “adoptable.” Warrick attacks this testimony as insufficient to establish the likelihood that M.A. will be adopted because the caseworker had just taken over the case and had not reviewed the entire case file. However, this goes to the weight to be given to this testimony—a matter solely for the circuit court.

As part of her first point, Warrick also argues that there is insufficient evidence of potential harm to M.A. should she be returned to her care. According to Arkansas Code Annotated section 9-27-341 (Repl. 2007), the circuit court was only required to consider the potential harm to the health and safety of a child that might result from continued contact with the parent. The court was not required to find that actual harm would result or to affirmatively identify a potential harm. Furthermore, the supreme court has directed that the harm analysis be conducted in broad terms—encompassing the harm the child suffers from the lack of stability in a permanent home. See *Bearden v. Arkansas Dep’t of Human Servs.*, 344 Ark. 317, 42 S.W.3d 397 (2001). Finally, the court’s potential-harm inquiry is but one of many factors that a circuit court must consider in a best-interest analysis. *Id.* By being incarcerated, Warrick cannot provide M.A. with a proper home. Warrick admits that she is under a ten-year sentence but asserts that she will be released in approximately two years. However, even accepting Warrick’s calculation as to her release, it will still be two more years before she can provide a stable home for M.A. Therefore, we cannot say that the circuit court was clearly erroneous in finding that it is in M.A.’s best interest for Warrick’s parental rights to be terminated.

In her second point, Warrick argues that the circuit court erred in finding grounds for termination of her parental rights. In its order, the circuit court found that three grounds had been proven. Only one ground is necessary to terminate parental rights. *Albright v. Arkansas Dep't of Human Servs.*, 97 Ark. App. 277, ___ S.W.3d ___ (2007).

Although Warrick concedes that M.A. has been out of the home for more than twelve months, she asserts, without citation of authority, that this ground cannot be used to terminate her parental rights because she complied with the case plan and remedied the conditions that caused M.A.'s removal in the first instance. However, even full completion of a case plan is not determinative of the outcome of a petition to terminate parental rights. *Wright v. Arkansas Dep't of Human Servs.*, 83 Ark. App. 1, 115 S.W.3d 332 (2003). What matters is whether completion of the case plan achieved the intended result of making the parent capable of caring for the child. *Id.* Here, because of her incarceration, Warrick is not in a position to care for M.A. for, by her own admission, another two years.

In light of there being sufficient evidence as to one ground, it is not necessary for us to address Warrick's remaining arguments.

Affirmed.

PITTMAN, C.J., and BIRD, J., agree.